

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**GOFF GROUP, INC., and JOHN W.
GOFF,**

Plaintiff,

v.

PHOENIX-DURANGO, LLC, et al.,

Defendants.

**CIVIL ACTION NO.
CV - 06-389**

**RESPONSE TO THE BANKRUPTCY TRUSTEE'S MOTION FOR REMAND OF
PROCEEDINGS TO BANKRUPTCY COURT AND RESPONSE TO SHOW CAUSE
ORDER REGARDING REMAND TO STATE COURT**

COME NOW defendants Phoenix-Durango, LLC, Jeremiah A. Henderson II, and Jeremiah A. Henderson III (jointly "Defendants"), and in response to the Bankruptcy Trustee's Motion for Remand of Proceedings to Bankruptcy Court and Response to Show Cause Order Regarding Remand to State Court, say as follows:

1. On December 27, 2006, Susan Shirlock DePaola, Trustee of the Bankruptcy Estate of Goff Group, Inc., moved this Court for a transfer of this case to the United States Bankruptcy Court for the Middle District of Alabama. *See* Motion for Remand of Proceedings to Bankruptcy Court and Response to Show Cause Order Regarding Remand to State Court.¹

2. Specifically, the Trustee states that "[t]he claims asserted by the Plaintiff in this action against the Goff Group, Inc. are core proceedings as defined by 28 U.S.C. § 157(b)(2) or in the alternative, are non-core proceedings which are related to the bankruptcy proceedings of the Goff Group, Inc. which may be referred to the bankruptcy court pursuant to 28 U.S.C. §

¹ Although the pleading is titled "Motion for Remand," the Bankruptcy Trustee states she is seeking a "referral" to the Bankruptcy Court and not a remand to state court. *See* Motion for Remand of Proceedings to Bankruptcy Court and Response to Show Cause Order Regarding Remand to State Court, ¶ 5-6.

157(c).”² The Trustee then prays for an order referring the entire case to the United States Bankruptcy Court pursuant to 28 U.S.C. § 157(b), or, in the alternative, an order referring the entire case for pre-trial and trial proceedings resulting in a report and recommendation to this Court for entry of final judgment pursuant to 11 U.S.C. § 157(c).

3. Defendants concede that because Goff Group filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Middle District of Alabama in June of 2006, Goff Group’s claims against Defendants (as pled in the Complaint and First Amended Complaint), and Phoenix-Durango’s counterclaims against Goff Group (as pled in the Amended Answer to Plaintiff’s First Amended Complaint and Counterclaim of Phoenix-Durango) are due to be transferred to the United States Bankruptcy Court for the Middle District of Alabama as core proceedings or as non-core proceedings related to the bankruptcy proceedings of Goff Group. Only the claims by and against Goff Group, however, are due to be transferred.

4. Plaintiff John Goff has not filed for protection of the Bankruptcy Court. Defendants do not agree that John Goff’s claims against Defendants or Phoenix-Durango’s counterclaims against John Goff are due to be transferred to the Bankruptcy Court, or that there is any basis for the referral of those claims to the Bankruptcy Court. John Goff sued Defendants for various relief allegedly based upon Phoenix-Durango’s attempt to foreclose on the Subject Property. *See* Complaint and First Amended Complaint. Phoenix-Durango counterclaimed against John Goff, seeking a judicial foreclosure on the Subject Property (of which he was and still is the nominal owner) and seeking a determination of his liability, as the personal guarantor, on the note which Phoenix-Durango holds. *See* Amended Answer to Plaintiff’s First Amended Complaint and Counterclaim of Phoenix-Durango. Defendants do not understand any basis

² The Bankruptcy Trustee refers to claims asserted by the “Plaintiff” against Goff Group, Inc. Phoenix-Durango, however, is not the Plaintiff in this action; John Goff and Goff Group, Inc., are the plaintiffs. Phoenix-Durango is

whatsoever for transferring these claims (by and against a non-bankrupt individual) to the Bankruptcy Court. Instead, the claims by and against John Goff, which are not within the jurisdiction of the Bankruptcy Court, should be severed from the claims by and against Goff Group, which are within the jurisdiction of the Bankruptcy Court, and should remain pending in this Court, where they rightfully belong.

5. The claims involving John Goff, once retained in this Court, should then be stayed, pending a determination of who is the proper owner of the Subject Property, either John Goff or Goff Group. This issue is currently being litigated in an adversary proceeding filed by the Trustee against John Goff in Goff Group's bankruptcy case in the United States Bankruptcy Court for the Middle District of Alabama (CV-06-3098). In that case, the Trustee has alleged that John Goff improperly obtained title to the property by means of a fraudulent conveyance; the Trustee seeks the recovery of ownership of property for the estate of Goff Group. The proper owner of the Subject Property must be decided in order to determine how the claims of Goff, Goff Group, and Phoenix-Durango in this case should proceed. For example, if John Goff, the present titleholder to the Subject Property, is determined to be the proper owner, then Goff Group has no interest in the property and the judicial foreclosure is due to be litigated between the owner (Goff) and the mortgagee (Phoenix-Durango) in this District Court. If, however, the Adversary Proceeding results in a determination that John Goff obtained title by means of a fraudulent conveyance, and Goff Group is determined to be the proper owner of the Subject Property, then John Goff has no interest in the property and the judicial foreclosure is due to be litigated in the Bankruptcy Court. In that situation, the only claims left for this Court to

the defendant, asserting counterclaims against the plaintiff, Goff Group, Inc.

adjudicate would be Phoenix-Durango's claims against John Goff as the personal guarantor of the note.³

6. Once it is determined by the Bankruptcy Court who properly holds title to the Subject Property, that ruling will be brought to the attention of this Court. That determination will be dispositive of many of the claims before this Court. The remaining claims, whether they be John Goff's claims based on the alleged wrongful foreclosure and Phoenix-Durango's claims for judicial foreclosure against Goff and for a judgment regarding Goff's personal liability on the note, or whether they be solely Phoenix-Durango's claim for regarding Goff's personal liability on the note (because the other issues are disposed of by the determination that Goff Group is the rightful owner of the property), can then be litigated.

WHEREFORE, ABOVE PREMISES CONSIDERED, Defendants respectfully request that this Court order the following:

(a) that all claims between John Goff and the Defendants, Phoenix-Durango, Jeremiah A. Henderson II, and Jeremiah A. Henderson III, be severed from all claims between Goff Group, Inc., and the Defendants;

(b) that the claims of Goff Group against Defendants and Defendant Phoenix-Durango's claims against Goff Group be referred to the United States Bankruptcy Court for the Middle District of Alabama;

(c) that the claims of John Goff against Defendants and Phoenix-Durango's claims against John Goff be stayed pending further order of this Court upon notice to it by the parties hereto of the outcome of the Adversary Proceeding in the Bankruptcy Court.

Respectfully submitted,

³ In those circumstances, it would appear that John Goff individually, having been determined to have no interest in the property, would not have standing to assert any claims for wrongful foreclosure.

/s/Vernon L. Wells, II

/s/C. Ellis Brazeal

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2007, I electronically filed the foregoing RESPONSE TO THE BANKRUPTCY TRUSTEE'S MOTION FOR REMAND OF PROCEEDINGS TO BANKRUPTCY COURT AND RESPONSE TO SHOW CAUSE ORDER REGARDING REMAND TO STATE COURT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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